

Mr. Jose Alvarez
Phillips & Paolicelli, LLP
380 Madison Ave, 24th Floor
New York, NY 10017

Re: AES Puerto Rico, LP
FOIA Request No. EPA-R2-2013-005858

Dear Mr. Alvarez:

This is in response to your May 2, 2013, request under the Freedom of Information Act (FOIA), sent via electronic mail, for documents relating to AES Puerto Rico, L.P. (AES). The U.S. Environmental Protection Agency (EPA), Region 2, has concluded its search for documents encompassed by your FOIA request. EPA has interpreted your request to be seeking reports, letters, chemical analyses, memoranda, photos, environmental monitoring assessments and environmental analyses by or on behalf of EPA Region 2 in connection with the land placement of Agremax by AES.

Enclosed please find a compact disc with the requested documents, except that we are withholding certain internal legal memoranda and other documents because they fall under the deliberative process privilege and/or the attorney work-product privilege encompassed by FOIA Exemption 5, 5 U.S.C. §552(b)(5), and/or the documents are covered by FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). These memoranda and other documents comprise approximately 618 pages in total and are identified in the attached chart.

You may appeal this partial denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), e-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you submit your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, D.C. 20004. Your appeal must be in writing and must be submitted no later than 30 calendar days from the date of this letter. EPA will not consider appeals received after the 30 calendar day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA request number shown above. For quickest possible handling, the appeal letter and its envelope

should be marked "Freedom of Information Act Appeal." If you have any questions regarding this matter, please contact Mr. Gary H. Nurkin, Assistant Regional Counsel, at 212-637-3195.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

Bcc (w/o enclosure): L. Grossman, DECA/RCB
G. Nurkin, ORC/AWTS

Enclosure

Documents Being Withheld in Response to FOIA Request No. EPA-R2-2013-005858

Nature of Document	Date of Document	Reasons for Withholding
One page timeline	Undated	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A) (information compiled for law enforcement purposes and the disclosure of which could reasonably be expected to interfere with enforcement proceedings).
Two page Salinas landfill and AES Guayama Coal Ash Sheet prepared by RCB	September 26, 2010	One bullet point withheld (i.e., redacted) as information compiled for law enforcement purposes and the disclosure of which could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. §552(b)(7)(A)) and personal information redacted (i.e., being withheld as non responsive that is unrelated to the FOIA request). Remainder is provided.
Two page Fact Sheet prepared by RCB	February 6, 2011	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Three page Fact Sheet prepared by RCB	February 6, 2011	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Two page Fact Sheet prepared by RCB	February 7, 2011	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
One page Fact Sheet prepared by RCB	December 20, 2011	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Three page Fact Sheet prepared by RCB	February 3, 2012	The non-responsive portions have been redacted and only the responsive part is being provided.
Two page Fact Sheet on AGREMAX prepared by RCB	March 7, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).

Forty-eight page draft report entitled "Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	September 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Seventy-three page draft report Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	September 11, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Forty-nine page draft Watermark report Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	September 12, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Two page AES/Agremax Fact Sheet prepared by RCB	September 27, 2012	Portions of the fact sheet are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A). Remainder is provided.
Eighty-two page draft report Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	October 1, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Three page Fact Sheet on Agremax prepared by RCB	October 4, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Forty-nine page draft report Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	October 4, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) Only the technical review form is being released.
Fifty-two page draft report Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	October 12, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Forty-eight page draft report Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development	October 17, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).

Three page Environmental Issues prepared by RCB	November 27, 2012	Portions of the document withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. § 552(b)(7)(A).
One page document Planned Communications with AES	November 29, 2012	Portions of the document withheld (redacted) under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A). Remainder is provided.
Two page DECA Highlights prepared by RCB	December 6, 2012	Portions are redacted as being non-responsive. Of the responsive bullet, part of that bullet is being withheld under 5 §552(b)(7)(A). Remainder is provided.
Three page Environmental Issues prepared by RCB	December 13, 2012	Portions are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. § 552(b)(7)(A). Remainder is provided.
Three page Agremax/AES Fact Sheet prepared by RCB	December 13, 2012	Portions are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. § 552(b)(7)(A). Remainder is provided.
Two page Talking points prepared by RCB	December 13, 2012	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. § 552(b)(7)(A).
Three page Environmental Issues prepared by RCB	January 8, 2013	Portions are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. § 552(b)(7)(A). Remainder is provided.
Three page Fact Sheet prepared by ORC staff	February 7, 2013	Portions of this Fact sheet are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege and/or attorney work product privilege) and 5 U.S.C. §552(b)(7)(A). The remainder is non-responsive to this request.

One page Fact Sheet on Agremax prepared by RCB	February 11, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Four page memorandum on AES by ORC legal staff	February 11, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege, and/or attorney work product) and 5 U.S.C. §552(b)(7)(A).
Six page summary of Questions to be asked of AES developed by ORC legal staff	On or about February 11, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege, and/or attorney work product) and 5 U.S.C. §552(b)(7)(A).
Two page Coal Ash Placement prepared by RCB	February 13, 2013	Partially redacted. The redacted portions are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege). Remainder is provided.
Four page Summary of Call with AES prepared by ORC legal staff	February 14, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege, and/or attorney work product) and 5 U.S.C. §552(b)(7)(A).
Two page List of Action Items prepared by RCB	February 14, 2013	Partially redacted because most of the items are non-responsive. The one item that is responsive is being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Two page Agremax/AES Fact Sheet prepared by RCB	February 20, 2013	Portions are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. § 552(b)(7)(A). Remainder is provided.
Three page Environmental Issues prepared by RCB	February 20, 2013	Portions of this Fact sheet (and 43 superseded versions prepared between March 30, 2011, and January 14, 2012, comprising about 99 pages) are being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
One page Fact Sheet prepared by CEPD	February 21, 2013	Non responsive information redacted or removed. Remainder is provided.

One page AES Fact Sheet prepared by RCB	February 27, 2013	Portions have been withheld as being either non responsive or withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege). Remainder is provided.
Five page AES Fact Sheet prepared by RCB	February 28, 2013	Portions have been withheld as being either non responsive or withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) Remainder is provided.
Eleven page Legal Memorandum (including two earlier versions) prepared by ORC staff	On or about March 7, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege and/or attorney work product) and 5 U.S.C. §552(b)(7)(A).
Two page Fact Sheet on Use of Agremax prepared by RCB	March 7, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Two page memorandum prepared by RCB	March 8, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
One page Fact Sheet prepared by RCB	March 12, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Two page Memorandum prepared by RCB	March 12, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
One page Fact Sheet prepared by RCB	March 12, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
One page Fact Sheet prepared by RCB	March 13, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).

One page Fact Sheet prepared by RCB	March 13, 2013	Being withheld under 5 U.S.C. § 552(b)(5) (deliberative process privilege).
Three page Action item prepared by RCB	March 27, 2013	All of the document except for one paragraph is non-responsive. The one paragraph that is responsive is being withheld under U.S.C. § 552(b)(5) (deliberative process privilege, and/or attorney work product) and 5 U.S.C. §552(b)(7)(A).
Three Page Highlight prepared by ORC	March 28, 2013	All of the document except for one paragraph is non-responsive. The one paragraph that is responsive is being withheld under U.S.C. § 552(b)(5) (deliberative process privilege, and/or attorney work product) and 5 U.S.C. §552(b)(7)(A).
Five page Draft response to AES's comments on the Leaching Behavior of "AGREMAX" Collected from a Coal-Fired Power Plant in Puerto Rico," prepared for EPA's Office of Research and Development prepared by ORCR	April 4, 2013	Being withheld under U.S.C. § 552(b)(5) (deliberative process privilege).
Comments by Paul Simon on ORCR's response to AES's comments (five pages)	April 11, 2013	Being withheld under U.S.C. § 552(b)(5) (deliberative process privilege, and/or attorney work product) .
One page Enforcement Highlight prepared by RCB	April 12, 2013	Being withheld under U.S.C. § 552(b)(5) (deliberative process privilege).
Three page RCB Highlights prepared by RCB	April 13, 2013	The non responsive parts have been redacted and the responsive paragraph is being withheld under withheld under U.S.C. § 552(b)(5) (deliberative process privilege) and 5 U.S.C. §552(b)(7)(A).
Comments by Mark Maddaloni, Risk Assessor/Toxicologist on ORCR's response to AES's comments (five pages)	April 17, 2013	Being withheld under U.S.C. § 552(b)(5) (deliberative process privilege).